

Panaji, 27th September, 1984 (Asvina 5, 1906)

SERIES II No. 26

OFFICIAL GAZETTE



GOVERNMENT OF GOA, DAMAN AND DIU

GOVERNMENT OF GOA, DAMAN AND DIU

Department of Personnel and Administrative Reforms

Order

No. 19/81/82-PER (Pt. file)

Sanction is hereby accorded to depute Shri R. I. Jai Prakash, Grade I Officer of the Goa, Daman and Diu Civil Service and at present functioning as Joint Secretary (Personnel) for one year M.A. in Development Studies at the University of Manchester, United Kingdom, under Colombo Plan, commencing from 5th October, 1984. He is permitted to leave the headquarters on 25-9-1984.

2. Shri R. I. Jai Prakash is authorised to undertake the journey from Goa to Delhi by air i.e. upto the port of embarkation in India. His return journey from the port of embarkation in India will be as per his entitlement. The period of training including journey will be treated as "on duty".

3. Shri R. I. Jai Prakash is allowed to hand over the charge of the post of Jt. Secretary (Personnel) to the Under Secretary (Personnel).

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 22nd September, 1984.

Order

No. 3/41/82-PER

The Administrator of Goa, Daman and Diu is pleased to transfer Shri S. K. Jain, Grade I Officer of the Goa, Daman and Diu Civil Service from the post of Joint Secretary (Planning and Development) and post him against the post of Additional Collector of Goa, with immediate effect.

2. Shri Jain shall continue to hold the additional charge of the post of Administrator of Margao Municipal Council.

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 24th September, 1984.

Order

No. 19/8/84-PER

Sanction is hereby accorded to depute Shri A. Venkataratnam, Grade I Officer of the Goa, Daman and Diu Civil Service and at present functioning as Director of Transport for a Course in M.Sc. in Transport under Colombo Plan at

the University of Wales, Cardiff for 12 months commencing from 26th September, 1984. He is permitted to leave the headquarters on 18-9-84.

2. Shri Venkataratnam will be entitled to TA/DA upto the port of embarkation in India and back as per his entitlement. The period of training including journey will be treated as on duty.

3. During the period of training of Shri A. Venkataratnam, Shri S. M. Dixit, Assistant Director of Transport shall officiate as Director of Transport in addition to his own duties until further orders.

4. Shri Jose Philip, Registrar of Co-operative Societies is appointed as the Administrator of Panaji Municipal Council in addition to his own duties in place of Shri A. Venkataratnam, consequent upon his deputation for the above course.

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 17th September, 1984.

Order

No. 1/5/83-PER

The Administrator of Goa, Daman and Diu is pleased to appoint Shri S. S. Byali, Grade II Officer of the Goa, Daman and Diu Civil Service and present Asst. Director of Fisheries, as Director of Administration, Electricity Department, in the pay scale of Rs. 1100-1600, on deputation basis, with immediate effect.

2. The terms of deputation of Shri Byali shall be governed by the standard terms of deputation.

3. The period of deputation shall be for a period of one year in the first instance.

By order and in the name of the Administrator of Goa, Daman and Diu.

N. P. Gaunekar, Under Secretary (Personnel).

Panaji, 17th September, 1984.

Secretariat Administration and Coordination Division

Order

No. 37/4/84-SA & C

Read: Order of even number dated 7th July, 1984.

Government is pleased to declare the post of Accountant in the Office of Special Commissioner created vide order referred to above as ex-cadre post with immediate effect.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. H. Mascarenhas, Under Secretary (S.A. & C.).

Panaji, 20th September, 1984.

Notification

No. 4/1/84-SA&C

In exercise of the powers of the Central Government under the Explanation to Section 25 of the Negotiable Instruments Act, 1881 (26 of 1881) delegated to him by the Government of India, Ministry of Home Affairs Notification No. U-11030/2/2/73-UTL dated 28-6-1973, the Administrator of Goa, Daman and Diu hereby declares the days specified in the enclosed Annexure I to be the Public Holidays in the Union Territory of Goa, Daman and Diu during the year 1985.

The Public Holidays declared should be treated as Bank Holidays. In addition, the following days are also declared as Bank Holidays:

- a) 30th June, 1985 — Half yearly closing of accounts.
- b) 31st December, 1985 — Yearly closing of accounts.

The Administrator is also pleased to direct that the holidays indicated in the enclosed Annexure II will be chosen by the Government employees for observing 2 Restricted Holidays during the year 1985 for which permission should be sought in advance from the authority competent to sanction casual leave.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. H. Mascarenhas, Under Secretary (S. A. & C.)

Panaji, 19th September, 1984.

ANNEXURE I

List of Public Holidays for the year 1985

Sr. No.	Holiday	Date/Saka	Day of the Week
1.	Republic Day	26th January, 1985/6th Magha, 1906	Saturday
2.	Holi (1st Day)	6th March, 1985/15th Phalguna, 1906	Wednesday
3.	Gudi Padva	22nd March, 1985/1st Chaitra, 1907	Friday
4.	Good Friday	5th April, 1985/15th Chaitra, 1907	Friday
5.	Idul Fitr* (Ramzan)	20th June, 1985/30th Jaistha, 1907	Thursday
6.	Independence Day	15th August, 1985/24th Sravana, 1907	Thursday
7.	Idu'z Zuha* (Bakrid)	27th August, 1985/5th Bhadra, 1907	Tuesday
8.	Janmashtami (For Districts of Daman and Diu only)	7th September, 1985/16th Bhadra, 1907	Saturday
9.	Ganesh Chaturthi	18th September, 1985/27th Bhadra, 1907	Wednesday
9A.	Ganesh Chaturthi (2nd Day) (For District of Goa only)	19th September, 1985/28th Bhadra, 1907	Thursday
10.	Muharram	26th September, 1985/4th Asvina, 1907	Thursday
11.	Mahatma Gandhi's Birthday	2nd October, 1985/10th Asvina, 1907	Wednesday
12.	Dussehra (1st Day)	22nd October, 1985/30th Asvina, 1907	Tuesday
13.	Diwali (1st Day)	11th November, 1985/20th Kartika, 1907	Monday
14.	Feast of St. Francis Xavier	3rd December, 1985/12th Agrahayana, 1907	Tuesday
15.	Goa Liberation Day	19th December, 1985/28th Agrahayana, 1907	Thursday
16.	Christmas	25th December, 1985/4th Pausa, 1907	Wednesday

* Subject to change depending on appearance of the moon.

ANNEXURE II

List of Restricted Holidays for the year 1985

Sr. No.	Holiday	Date/Saka	Day of the Week
1.	New Year Day	1st January, 1985/11th Pausa, 1906	Tuesday
2.	Guru Govind Singh's Birthday	10th January, 1985/20th Pausa, 1906	Thursday
3.	Makarāsankranti	14th January, 1985/24th Pausa, 1906	Monday
4.	Guru Ravidas' Birthday	5th February, 1985/16th Magha, 1906	Tuesday
5.	Carnival (3rd Day)	19th February, 1985/30th Magha, 1906	Tuesday
6.	Holi (2nd Day)	7th March, 1985/16th Phalguna, 1906	Thursday
7.	Ram Navami	30th March, 1985/9th Chaitra, 1907	Saturday

Sr. No.	Holiday	Date/Saka	Day of the Week
8.	Mahavir Jayanti	3rd April, 1985/13th Chaitra, 1907	Wednesday
9.	Maundy Thursday	4th April, 1985/14th Chaitra, 1907	Thursday
10.	Shivaji Jayanti	22nd April, 1985/2nd Vaisakha, 1907	Monday
11.	May Day	1st May, 1985/11th Vaisakha, 1907	Wednesday
12.	Buddha Purnima	4th May, 1985/14th Vaisakha, 1907	Saturday
13.	Corpus Christi	6th June, 1985/16th Jaistha, 1907	Thursday
14.	Onam (Thiru)	28th August, 1985/6th Bhadra, 1907	Wednesday
15.	Narali Purnima/Raksha Bandhan	29th August, 1985/7th Bhadra, 1907	Thursday
16.	Janmasthami (For District of Goa only)	7th September, 1985/16th Bhadra, 1907	Saturday
17.	Hartalika	17th September, 1985/26th Bhadra, 1907	Tuesday
18.	Dussehra	23rd October, 1985/1st Kartika, 1907	Wednesday
19.	All Souls Day	2nd November, 1985/11th Kartika, 1907	Saturday
20.	Diwali (2nd Day)	12th November, 1985/21st Kartika, 1907	Tuesday
21.	Govardhan Puja	13th November, 1985/22nd Kartika, 1907	Wednesday
22.	Bhai Duj	14th November, 1985/23rd Kartika, 1907	Thursday
23.	Id-e-Milad	26th November, 1985/5th Agrahayana, 1907	Thursday
24.	Guru Nanak's Birthday	27th November, 1985/6th Agrahayana, 1907	Friday
25.	Feast of Immaculate Conception	7th December, 1985/16th Agrahayana, 1907	Saturday
26.	Guru Teg Bahadur's Martyrdom Day	16th December, 1985/25th Agrahayana, 1907	Monday
27.	Christmas Eve	24th December, 1985/3rd Pausa, 1907	Tuesday
28.	Christmas Festival Boxing Day	26th December, 1985/5th Pausa, 1907	Thursday
29.	New Year's Eve	31st December, 1985/10th Pausa, 1907	Tuesday

Note: — Following days have not been notified as "Restricted Holidays" as they fall on Sundays.

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|----|-------------------------|--------------------------------------|
| 1. | Mahashivratri | 17th February, 1985/28th Magha, 1906 |
| 2. | Dr. Ambedkar's Birthday | 14th April, 1985/24th Chaitra, 1907 |

Notification

No. 4/1/84-SA & C

Commercial and Industrial Holidays for 1985

The following days are suggested as paid holidays for Commercial and Industrial workers in Goa, Daman and Diu for the year 1985.

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|----|---------------------------|---|-----------|
| 1. | Republic Day | 26th January, 1985/6th Magha, 1906 | Saturday |
| 2. | Independence Day | 15th August, 1985/24th Sravana, 1907 | Thursday |
| 3. | Ganesh Chaturthi | 18th September, 1985/27th Bhadra, 1907 | Wednesday |
| 4. | Mahatma Gandhi's Birthday | 2nd October, 1985/10th Asvina, 1907 | Wednesday |
| 5. | Diwali | 11th November, 1985/20th Kartika, 1907 | Monday |
| 6. | Goa Liberation Day | 19th December, 1985/28th Agrahayana, 1907 | Thursday |
| 7. | Christmas Day | 25th December, 1985/4th Pausa, 1907 | Wednesday |

Note: — According to decision communicated by Government of India, Ministry of Finance, In Memo No. F.8(7)-EST(Spl.) dated 7th November, 1963, casual employees, including daily rated staff will be entitled to paid holidays if they are in services on the preceding and succeeding working days.

By order and in the name of the Administrator of Goa, Daman and Diu.

G. H. Mascarenhas, Under Secretary (S. A. & C.)

Panaji, 19th September, 1984.

Home Department (General)

Notification

No. 2/39/81-HD(G)

In exercise of the powers conferred by section 11 of the Essential Services Maintenance Act, 1981 (Central Act 40 of 1981), read with the Government of India Notification No. S. O. No. 161(E) dated the 14th March 1984, the Administrator of Goa, Daman and Diu hereby specially empowers the following Judicial Magistrates of the First Class to try, within their respective jurisdiction, all offences under the said Act in a summary way:—

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|----------------------------|--|
| 1) Shri D. R. Kenkre. | Judicial Magistrate, First Class, Panaji. |
| 2) Shri A. D. Salkar. | Judicial Magistrate, First Class, Mapusa. |
| 3) Shri N. S. Kaissare. | Judicial Magistrate, First Class, Bicholim. |
| 4) Shri S. S. Kamat. | Judicial Magistrate, First Class, Daman & Diu. |
| 5) Shri G. A. P. Mahambre. | Judicial Magistrate, First Class, Margao. |
| 6) Shri M. D. Kamath. | Judicial Magistrate, First Class, Quepem. |
| 7) Shri S. B. Naik. | Judicial Magistrate, First Class, Ponda. |
| 8) Shri P. Sundararajan. | Judicial Magistrate, First Class, Vasco-da-Gama. |

By order and in the name of the Administrator of Goa, Daman and Diu.

K. N. S. Nair, Under Secretary (Home).

Panaji, 10th September, 1984.

Works, Education and Tourism Department

Order

No. 14/13/84-WET/10332

The Administrator of Goa, Daman and Diu is pleased to appoint an Advisory Committee under his Chairmanship in order to advise the Government in regard to the various matters pertaining to the establishment and development of Goa University:—

1. Chief Minister — Vice Chairman.
 2. Education Minister — Member.
 3. Dr. M. S. Gore, Vice Chancellor, Bombay University, Bombay — Member.
 4. Dr. D. M. Nanjundappa, Secretary to the Government of Karnataka (Ex-Vice Chancellor of Karnataka University) — Member.
 5. Dr. K. J. Mahale, Vice Chancellor of Manipur University, Imphal — Member.
 6. Dr. B. Sheikh Ali, Vice Chancellor of Mangalore University, Mangalore — Member.
 7. Dr. V. V. R. Varadachari, Director of National Institute of Oceanography, Dona Paula-Goa — Member.
 8. Dr. Bailon de Sa, Educationist Corlim, Ilhas Goa — Member.
 9. Secretary (Education) — Member.
 10. Chief Engineer, Public Works Department — Member.
 11. Director, Centre of Postgraduate Instruction and Research, Panaji — Member.
 12. Director of Education, Panaji — Member Secretary.
2. The Committee may meet from time to time (at least once in six months) to make a review of the progress.
- Its advice may be sought on all matters, relevant to the establishment and development of the Goa University.
3. The non-official members of the Advisory Committee will be eligible for TA/DA as admissible to the Senior Class I Officers of the Government of Goa, Daman and Diu. The expenditure on the sittings of the Committee will be met from the plan scheme under Major Head "277-E- University and Other Higher Education E.1(3) Goa University (Plan)".

4. The Committee may co-opt any additional members, if required, with the approval of the Chairman/Administrator.

By order and in the name of the Administrator of Goa, Daman & Diu.

V. S. Sawant, Under Secretary to the Government of Goa, Daman & Diu.

Panaji, 3rd September, 1984.

Order

No. 7/11-2/83-WET

On the recommendation of Departmental Promotion Committee, the Administrator of Goa, Daman and Diu is hereby pleased to confirm Shri S. G. Torney in the grade of Architect in the scale of Rs. 1100-1600 in the P. W. D. with effect from 19-7-1984.

This issues with the concurrence of Union Public Service Commission vide their letter No. 12/13(4)/84-AU.II dated 19-7-1984.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. S. Sawant, Under Secretary to the Government of Goa, Daman and Diu.

Panaji, 3rd September, 1984.

Order

No. 12/16/83/WET

Read:— Government Order No. 12-11-EDN dated 20-1-1976.

On the recommendation of Union Public Service Commission Shri S. Thayumanavan is hereby appointed to officiate in the post of Assistant Professor (Training) in Goa Engineering College, Farmagudi, with effect from 31-8-84 (F.N.).

The appointment is temporary and he will be on probation for a period of two years.

The scale of pay of the post is Rs. 1100-50-1600 and his pay is to be fixed according to the rules in the pay scale of Rs. 1100-1600 as recommended by the Union Public Service Commission vide their letter No. F.1/527/82-R.G. dated 25-1-84. He will be entitled for dearness allowances and other allowances as admissible to the employees of this Administration.

Other conditions of his service will be governed by the relevant rules and orders issued by the Central Government in this behalf from time to time.

His appointment is subject to the condition that in case he is found to be having bad character/reputation or antecedent his services will be terminated.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. S. Sawant, Under Secretary to the Government of Goa, Daman and Diu.

Panaji, 17th September, 1984.

Order

No. 7/15-1/84-WET-GRP

Shri G. Rajendra Prasad, a candidate recommended by the Union Public Service Commission is appointed on temporary basis as Assistant Engineer (Electrical) in the Public Works Department in the scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200 plus all other admissible allowances from the date of his joining the post.

2. The appointment is subject to the terms and conditions specified in the Memorandum of even number dated 8-8-1984.

3. His pay will be fixed according to Rules in the pay scale of Rs. 650-1200/-.

4. He is posted as Assistant Surveyor of Works in the Office of the Superintending Surveyor of Works, Altinho, Panaji-Goa.

By order and in the name of the Administrator of Goa, Daman and Diu.

V. S. Sawant, Under Secretary (W. E. T.).

Panaji, 12th September, 1984.

Notification

No. 3/25-34/84/WET

In exercise of the powers conferred by clause (b) of section 3 of the Goa, Daman and Diu Irrigation Act, 1973 (18 of 1973), and in partial modification of notification No. PWD/CE/5582/76-EDN-PWD dated 15-4-1977, the Administrator of Goa, Daman and Diu hereby invests the Government Of-

ficers specified in column 2 of the Schedule annexed hereto with the powers and duties of the officer mentioned in the corresponding entry in column 3 within the jurisdiction specified in the corresponding entry in column 4 of the said Schedule.

SCHEDULE

Sr. No.	Officers	Officers under the Act	Jurisdiction
1	2	3	4
1.	i) Executive Engineer, Works Division I, Irrigation Department, Panaji.	Canal Officer	Tiswadi, Bardez, Pernem, Bicholim and Satari Talukas.
	ii) Executive Engineer, Works Division II, Irrigation Department, Margao.	Canal Officer	Ponda, Salcete, Sanguem, Quepem and Canacona Talukas except portions of these talukas coming under the command of Salauli Irrigation Project.
	iii) Executive Engineer, Works Division XIV, Irrigation Department, Margao-Goa.	Canal Officer	Command area of Salauli Irrigation Project in Sanguem, Salcete, Quepem Talukas.
2.	Executive Engineer, Works Division VII, Public Works Department, Daman.	Canal Officer	Daman and Diu Talukas.
3.	i) Collector of Goa.	Collector	Goa District.
	ii) Collector of Daman.	Collector	Daman and Diu District.
4.	Mamlatdar, appointed under Land Revenue Code.	Mamlatdar	Within the jurisdiction of the respective Mamlatdars under the Land Revenue Code.

By order and in the name of the Administrator of Goa, Daman and Diu.

P. W. Rane Sardessai, Under Secretary (Planning).

Panaji, 15th September, 1984.

Revenue Department

Notification

No. 22/118/83-RD

Whereas by Government Notification No. 22/118/83-RD dated 12-9-83 published on page 251-252 of Series II, No. 23 of the Official Gazette, dated 14-9-83 it was notified under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") that the land, specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for the public purpose viz. Land Acquisition for additional Land for Helipad at Ela Old Goa.

And Whereas the appropriate Government (hereinafter referred to as "the Government") is satisfied after consi-

dering the report made under sub-section (2) of Section 5A of the said Act, that the said land specified in the schedule hereto is needed to be acquired for the public purpose specified above.

Now, Therefore, the Government is pleased to declare under the provisions of Section 6 of the said Act that the said land is required for the public purpose specified above.

2. The Government is also pleased to appoint under clause (c) of Section 3 of the said Act, the Dy. Collector (Land Acquisition Officer), Panaji to perform the functions of a Collector for all proceedings hereinafter to be taken in respect of the said land, and to direct him under Section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the said Dy. Collector Land Acquisition Officer, Panaji till the award is made under Section 11.

SCHEDULE

(Description of the said land)

Sr. No.	Taluka	Village/Ward	Survey No.	Sub-Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3	4	5	6	7
	Tiswadi	Ela	27	1 part	Tarachand Khalap. Rama Datta Khalapkar. Vinod Purushottam Khalap.	347.00
				2 part	Tarachand Khalap. Ram Datta Khalapkar. Vinod Purushottam Khalap.	630.00
				3 part	Tarachand Khalap. Rama Datta Khalapkar. Vinod Purushottam Khalap.	35.00
				4 part	Tarachand Khalap. Rama Datta Khalapkar. Vinod Purushottam Khalap.	4775.00
				5 part	Tarachand Khalap. Rama Datta Khalapkar. Vinod Purushottam Khalap.	20.00

1	2	3	4	5	6	7
Tiswadi	Ela	28	8 part	Mandovi Coop. Society.		4.00
				Prabhavati Govind Khalap.		
				Vinord Purushottam Khalap.		
			25 part	Basilo Munserrate.		98.00
Boundaries:						
North: S. No. 27/2 & 27/4 and S. No. 28/4, S. No. 23/5, 27/2 and 25/0.						
South: S. No. 26/1 & land already acquired (2 part) and S. No. 25 part).						
East: Road, S. No. 26/1 and land already acquired (S. No. 27/2 part) & S. No. 25 part.						
West: Land already acquired (27/1 part) 27/ /4 (part) 27/2 and 25/0.						
Total						5909.00

By order and in the name of the Lt. Governor of Goa, Daman and Diu.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 5th September, 1984.

Public Health Department

Order

No. PHD/1(6)/76/Appt/SUR (Part file)

On the recommendation of the Union Public Service Commission Dr. Ajit Sinha is hereby appointed and posted as Sr. Surgeon at Primary Health Centre, Ponda under the Directorate of Health Services in the scale of Rs. 1100-1600 and on the terms and conditions contained in Government Memorandum of even number dated 27-7-1984.

The above doctor has been medically examined and found fit by the Medical Board, New Delhi.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 17th September, 1984.

Order

No. PHD/1(43)/77/Appt.

The resignation tendered by Dr. Anil P. Bajpai, E.N.T. Surgeon, Primary Health Centre, Diu under the Directorate of Health Services is accepted with effect from the date of his relief.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 15th September, 1984.

Order

No. 5/97/79-PHD-Jr. Gynae.

On the recommendation of the Local Selection Committee Dr. Vishnu W. Sheldenkar is appointed on ad-hoc basis to the post of Jr. Gynaecologist under the Directorate of Health Services and posted at Primary Health Centre, Curchorem against the vacant post in the scale of Rs. 650-80-740-35-810-EB-35-830-40-1000-EB-40-1200 and on the terms and conditions contained in the Government Memorandum of even number dated 24-5-1984. Dr. Sheldenkar should report at the place of posting immediately.

The above appointment will not bestow on the person a claim for regular appointment and the services rendered on ad-hoc basis in the grade would not count for the purpose of seniority in that grade or eligibility for promotion to the next higher grade.

The above doctor has been medically examined and found fit by the Medical Board, Panaji.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 19th September, 1984.

Order

No. 6/3/84-PHD

Read: Government order No. 6/3/84-PHD dated 30-5-1984.

In partial modification of the above referred Government order, Dr. (Mrs.) S. Vaidya, Jr. Gynaecologist shall continue at the Primary Health Centre, Ponda until further orders.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 19th September, 1984.

Notification

No. 60/7/80-PHD

In the exercise of the powers conferred by sub-section (3) of section 20 of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940), the Lieutenant Governor of Goa, Daman and Diu is pleased to appoint with the consent of the Central Government Dr. P. N. Varma, Director of Homoeopathic Pharmacopoeia Laboratory, Ghaziabad, as Government Analyst for the whole of the Union territory of Goa, Daman and Diu, for the purpose of testing Homoeopathic medicines under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 17th September, 1984.

Notification

No. 49/82-PHD

Government is pleased to constitute a State Level Mass Education Media Coordination Committee for the Union Territory of Goa, Daman and Diu consisting of the following members namely:—

1. Secretary Health — Chairman.
2. Station Director, AIR, Panaji — Member.
3. Field Publicity Officer, Panaji — Member.
4. Assistant Information Officer, Press Information Bureau, Panaji — Member.
5. Director of Information, Panaji — Member.
6. Director of Health Services, Panaji — Member.
7. State Mass Education and Media Officer, State Family Welfare Bureau — Member Secretary.

The Committee shall meet atleast once every quarter to facilitate effective Coordination between the Central Media Agencies and the State Information Department to boost up the Family Planning Programme.

By order and in the name of the Administrator of Goa, Daman and Diu.

S. V. Bhadri, Under Secretary (Health).

Panaji, 11th September, 1984.

Industries and Labour Department

Order

No. 28/9/84-ILD

Whereas the Lieutenant Governor of Goa, Daman and Diu is of the opinion that an industrial dispute exists between the management of M/s. Wyeth Laboratories (FARM) Limited, Valpoi, Satari-Goa, and their workmen represented by the General Secretary, Goa Trade & Commercial Workers' Union, Velho Building, 2nd floor, Panaji-Goa, in respect of the matters specified in the Schedule annexed hereto (hereinafter referred to as the 'said dispute');

And whereas the Lieutenant Governor of Goa, Daman and Diu considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Lieutenant Governor of Goa, Daman and Diu hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa, Daman and Diu, Panaji, constituted under Section 7A of the said Act.

SCHEDULE

"Whether the action of the management of M/s. Wyeth Laboratories Limited, Valpoi, Satari-Goa, in terminating the services of the following workmen w.e.f. 15-1-84 is legal and justified, namely:—

Sl. No.	Name of the Workers
1.	Yamuna V. Palkar,
2.	Shanti D. Mohite,
3.	Venu A. Naik,
4.	Laxmi K. Gaonkar,
5.	Sarojini R. Palkar,
6.	Laxmi D. Shiddekar,
7.	Anjani S. Palkar.

If not, to what relief the workmen are entitled to?"

By order and in the name of the Lt. Governor of Goa, Daman & Diu.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 15th September, 1984.

Order

No. 28/2/79-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Administrator of Goa, Daman and Diu.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 6th September, 1984.

IN THE LABOUR COURT GOA, DAMAN & DIU, PANAJI-GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No.: LCC/32/83

- | | |
|--|-------------|
| 1. Shri Roque D'Souza | — Applicant |
| V/s. | |
| 1. M/s. Agencia Commercial Maritima | — Opponent |
| Applicant represented by Shri George Vaz, Union Leader. | |
| Opponent represented by Shri S. V. Cuncohenkar, Labour Consultant. | |

Panaji, Dated: 25-7-1984

A W A R D

This is an application filed by the above applicant against the above Opponent under Section 33C(2) of the I.D.A., 1947, in short the Act, claiming from the latter Rs. 12,710-20, as per the annexure attached to the application and an additional amount of Rs. 12,939-20, towards gratuity and leave wages.

2. The employer opponent, in its written statement, has raised a preliminary objection regarding the jurisdiction of this Court to entertain the said application and, on the merits, has denied that the applicant is entitled to receive the amounts claimed.

3. The applicant filed a rejoinder to the written statement of the Opponent.

4. Following issues were framed by the Court:

"1. Whether the applicant proves that he/she is entitled to the amounts claimed?"

2. Whether the Opponents prove that this Court has no jurisdiction to entertain and decide this application as the Government has not specifically appointed this Court to entertain the application under 33C(2) of the I.D.A., 1947?

3. Whether the Opponents prove that the applicant did not attend or render any service to the Opponents since 24-8-1983 and by force and show of force he/she and others came once in a while and signed the muster roll?

4. Whether the Opponents prove that this Court has no jurisdiction under Section 33C(2) to entertain the applicant's claim in so far unpaid salaries, V.D.A., difference from 1-4-1975 to 30-9-1975, increment of V.D.A. difference in 1981-82, Bonus and Other Benefits as mentioned in clause 5 of para 3 of the Written Statement, as claimed by the Applicant?

Issues Nos. 2 and 4 concerning jurisdiction are to be treated as preliminary."

5. By my order dated 26-3-1984, preliminary issues regarding the jurisdiction were disposed off against the employer and evidence of the applicant on merits was fixed. On the date so fixed, the applicant remained absent but his representative could not give any explanation regarding the absence of the applicant. As it was for the applicant to prove his case and he has remained absent without any justification, heard both the parties, the following order was passed.

ORDER

In view of the absence of the applicant without any justification, his application is dismissed for default with no order as to costs and the matter is disposed off.

Dr. Renato de Noronha
Presiding Officer
Labour Court

Order

No. 28/2/79-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Administrator of Goa, Daman and Diu.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 22nd August, 1984.

IN THE INDUSTRIAL TRIBUNAL GOA, DAMAN AND DIU, PANAJI GOA

(Before Dr. Renato de Noronha, Hon'ble Presiding Officer)

Application No.: IT/9/81

1. M/s. Zuari Agro Chemicals Limited — Applicant
Y/s.

1. Mr. A. P. H. Carvalho — Opponent

Applicant represented by Shri Ramesh Desai, Labour Advisor and Adv. P. K. Rele.

Opponent represented by Adv. Ferdino Rebelo and Adv. J. Gadkari.

Panaji. Dated: 13-8-1984.

AWARD

By my order dated 15-10-1982, I have disposed off the preliminary issue in respect of the fairness of the domestic inquiry held by the applicant employer against the opponent workman. The contents of the said order, which shall be read as forming part of this Award, are hereby reproduced as under:

"This is an application under Section 33(2) of the I.D.A., 1947, hereinafter briefly called the Act, filed by the above applicant for approval of the dismissal order passed against the above opponent during the pendency of the reference made by the Govt. under Order No. 28/1/79/ILD, dated 25-7-1980.

2. It is applicant's case that some of the workmen of the applicant company indulged in acts of indiscipline such as interference with the work of contractors and other workers on and from the evening of September 6th 1980. The workmen indulged in several acts of vandalism and violence such as toppling Company vehicles, damaging company property and assaulting company Officers.

The Government of Goa, Daman and Diu, by their Order No. 28/1/79/ILD dated 25-7-1980, has referred for adjudication by this Tribunal of the dispute raised by the Zuari Agro Chemicals Limited Employees' Union (Goa) in regard to the promotion of Shri D'Melo. The Union, by their letter dated 8-9-1980, advised the Company that the workmen will resort to an indefinite strike with immediate effect. Since the strike was commenced in contravention of Section 23(b) of the Act, it is an illegal strike. The Opponent herein A.P.H. Carvalho went on illegal strike and also resorted to certain acts of violence and vandalism and even assault on Company's Officers, and, therefore, the company issued him a charge sheet dated 5-9-1980 for the following misconducts:

"1) Riotous and disorderly behaviour inside and outside the premises of the establishment. (XI)

2) Assault or threat of assault within and outside the premises of the Company. (XL)

3) Going on illegal strike, inciting, instigating and acting in furtherance thereof. (II)

4) Acts subversive of discipline or good behaviour on the premises of the Company. (XII)."

A domestic inquiry was held ex-parte, as the opponent did not participate in it, and the E.O. submitted his findings holding the Opponent guilty of the following charges:

"1. Guilty of riotous and disorderly behaviour in that:

(a) You incited other workmen and were directly involved in toppling Company vehicles.

(b) You actively participated in pelting stones on the Administrative Building and thereby causing extensive damage to Company property.

2. Guilty of threat of assault on Company Officers.

3. Guilty of going on illegal strike.

4. Guilty of acts subversive of discipline and good behaviour on the premises of the establishment."

The applicant company, having gone through the inquiry proceedings and having considered the past record of the opponent, decided to dismiss him with effect from 24-12-1980. The Opponent has been paid wages for one month under clause (b) of sub-section 2 of Section 3 of the Act. It is prayed that approval be granted to the action taken by the applicant company against the Opponent.

3. The opponent, in his reply, denied: that he was involved in any acts of indiscipline, vandalism and violence as alleged; that any dispute was raised by the Union regarding the promotion of Shri D'Melo; that any charge-sheets were issued to him and inquiry conducted ex-parte; that any findings were given by the E. O. and that the Opponent was paid one month's wages and put the applicant company to the strict proof of such allegations; without prejudice to the above denial and assuming without admitting that the documents accompanying the application are in existence, he stated that the alleged inquiry was conducted in complete violation of the principles of natural justice, without affording a fair and reasonable opportunity to the opponent to participate in it and, in any case, the applicant has failed to make out a case for dismissal of the opponent. This is a case of victimization against the opponent, who was an active worker of the Union. Many other workmen found guilty of same or similar charges were subjected to much lesser punishments.

4. Following issues were framed by the Tribunal:

"1. Do the Applicants prove that they have dismissed the workmen after holding a fair and proper inquiry against them as per the provisions of law and Standing Order, if any?

2. Do the Applicants prove that they have complied with the provision of Section 33(2)(b) of the Industrial Disputes Act?

3. Do the Opponents prove that they have been victimized for being office bearer/leading activist of the Union?

4. Do the Opponents prove that they have been subjected to unfair discrimination?

5. What relief?"

5. The applicant objected to the framing of issues regarding victimization and discrimination, alleging that such issues do not find place in an application for approval under Section 33(2) of the Act, wherein the Tribunal is concerned only with an enquiry as to whether a prima-facie case has been made out for dismissal/discharge of the workman and cannot examine whether the punishment imposed is proper or not on the facts and circumstances of the case. Heard the other party, the objection was over ruled by the Tribunal by its order dated 22-1-1982.

6. The representatives of both the parties requested that evidence in this case and in cases Nos. 5, 6, 10 and 11 of 81, being common, be retained in one file and admitted in the other files; similarly, evidence in cases Nos. 7 and 8 of 81, being common, be retained, in one file and admitted in the other.

Accordingly, it was decided that evidence in cases Nos. 5, 6, 9, 10 and 11 of 81 be retained in file No. IT/5/81 and evidence in cases Nos. 7 and 8 be retained in file 7 of 81. It was further agreed that the preliminary issue regarding the fairness of the inquiry be disposed off first. Consequently, evidence was led by the parties, but restricted to the preliminary issue. The applicant examined the Inquiry Officer, who produced the original inquiry proceedings. The opponent led his own evidence. The representatives of both the parties argued at length.

7. The first submission made by the Opponent's representative in the course of his arguments is that the domestic inquiry was not held by a competent authority and the punishment was also not imposed by competent authority.

The Ld. Rep. of the applicant, on his side, replied that the opponent cannot raise this contention at this stage, but had to raise it in his written statement.

According to me, this objection of the applicant cannot be sustained. It is well settled today that, in industrial adjudication, the law of pleadings cannot be applied in all its strictness (vide the S.C. Ruling in Tandur and Navandji Stone Quarries (P) Ltd., Bhasheerabad, Andhra Pradesh and their workmen in FLR Vol. VIII 1964 page 277); but the general principles of pleadings which require that the parties should be confined to the case set up by them are applicable (vide Allahabad High Court Ruling in Glaxo Laboratories India Ltd., Alligarh V/s. Glaxo Staff Association and Others reported in 1974 ILJC page 765 and S.C. Ruling in M/s. Parry and Company Limited and P. C. Pol and others in II LLJ 1970 page 429).

8. The stand taken by the Opponent in his written statement was that he was unaware of any ex-parte proceedings taken against him by the applicant and he had put the Company to strict proof thereof and added that, in any case, he was not given a fair and reasonable opportunity to participate in the inquiry proceedings. He has further stated that he is not aware "whether he has been legally and properly dismissed by the Company". On the basis of the pleadings of the parties, issue No. 1 was framed by the Tribunal and it reads as follows: "Do the applicant prove that they have dismissed the workmen after holding a fair and proper inquiry against them, as per the provisions of law and S.O. if any?"

In view of this issue, therefore, it was incumbent on the applicant to prove not only that an inquiry was held against the opponent but also that such inquiry was fair and proper, as per the provisions of law and S. O., if any. "Proper Inquiry as per the provisions of law and Standing Orders" would also mean that the person who held the inquiry was duly appointed by competent authority and the punishing order was also passed by the competent authority. Therefore, the contention of the Ld. Rep. of the applicant that the Tribunal cannot entertain the submission of the Ld. Rep. of the Opponent that the domestic inquiry was not held by competent authority and the punishment was also not imposed by competent authority, because this objection was not raised in the written statement, has no substance. As I have stated above, although the Opponent has not specifically raised the objection that the inquiry was not held by competent authority and the punishment was also not imposed by competent authority, he has raised it in a general way, alleging that he is not aware whether he has been legally and properly dismissed by the company and has put the Company to strict proof thereof and, on the basis of this allegation, issue No. 1 was framed, as reproduced above.

9. Applicant's rep. cannot argue that he was taken by surprise with the above submission made by the Opponent's rep. at the time of arguments, because, while cross-examining the Inquiry Officer, the Opponent's rep. has made it very clear that this was one of his contentions in defence.

10. I, therefore, hold that the submission made by the Opponent's rep. cannot be considered as a new point now raised for the first time, as contended by the Company's rep., since it is implied in the written statement of the opponent.

11. Let us see now whether the domestic inquiry held by the Company against the Opponent was held by a competent authority and the punishment also imposed by the competent authority.

12. In the certified S.O. of the applicant company (Exh M-13 of the Inquiry proceedings) the following definitions are found:

Section 1(a): Company means Zuari Agro Chemicals Limited having its registered office at Jai Kissan Bhavan, Zuarinagar Goa.

Section 1(f): Manager means the Managing Director or the Technical Director or Directors or Vice-Presidents or the Works Manager or person for the time being managing the establishment and includes any other Officer duly authorised to exercise powers of the Manager, such authorization being notified to the workmen by displaying it on the Notice Board of the Establishment.

Section 1(g): Management means the Managing Director or the Technical Director or Directors or Vice-Presidents or the Works Manager or such other Officer or Officers as may be authorised to exercise the powers of the Manager.

Section 6 of the S.O. provides that the order of appointment, confirmation, promotion or reclassification of every

workman excluding casual workman shall be signed by the Manager or person authorised in this behalf.

Section 15(IIa) provides that the leave sanctioning authority is the departmental head concerned.

Section 19(IX) prescribes that any order of termination of services shall be in writing and shall be signed by the Manager.

Section 24 deals with punishment. Sub-Section I clause (a) refers to warning or censure; (b) fine; (c) suspension without wages and allowances. Such suspension, as per the provision, is to be carried out by an order in writing signed by the Manager for a period not extending 15 days.

Sub-Section VII provides that, in awarding punishment under this S.O., the Manager shall take into account the gravity of the misconduct, the previous record if any of the workman and any other extenuating or aggravating circumstances that may exist.

13. The above quoted provisions are silent regarding who is the competent authority to order domestic inquiry against a workman for an alleged misconduct, but from sub-section VII it is clear that the punishment, atleast for the penalties referred to in clause (c) onwards, is to be imposed by the Manager.

14. In the case of State of Madhya Pradesh and others V/s. Shardul Singh reported in 1970 (1) S.C. Cases page 108, the Supreme Court, while interpreting Section 311(1) of the Constitution, has held that the said provision does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct the inquiry preceding the dismissal or removal of the officer or even that the inquiry should be done at its instance. Although this ruling was passed in a different context, namely regarding the correct interpretation of Section 311(1) of the Constitution, it makes it clear that the power to order disciplinary proceeding and the power to punish are two distinct powers, the last one has to be exercised by the authority prescribed by the statute but the first one can be exercised by a different authority when the statute does not require in terms that it has to be exercised by the punishing authority.

15. In Hindustan Brown Boveri Limited and their workmen and another reported in FLR Vol. 16 1968, page 325, relied upon by the Ld. Rep. of the Opponent the S. C. has held that where the S. O. give some definitions for the purpose of distribution of duties, only those definitions are relevant.

16. In our case, the S. O. in clear terms provide that the punishing authority is the Manager, but are silent regarding who is the competent authority to direct the domestic inquiry. It could be said that since the Company acts through its Board of Directors, this Board would be the competent authority to direct such inquiry, but I do not think that this would be the proper interpretation of the provisions of the S. O. Indeed, the power to punish is certainly more important than the power to direct the domestic inquiry. The former has been under the S. O. put in the hands of the Manager and since nothing has been provided regarding the latter it would not be reasonable to assume that it has been left to be exercised by the Board of Directors, which is the maximum authority through which the company acts. I think that the Head of the Department, being the highest authority in the Department, the power to direct the domestic inquiry should be deemed as included within his powers.

The Opponent, at the relevant time was working as a process technician in NPK plant, and the E. O. was appointed by Shri Deshpande, Manager of Personnel and Administrative Department (vide Exh. 5A (2) & 5A (3) in file No. 5/81.) The charge sheet was issued to the workman by the Works Manager and the dismissal order was passed by the Vice-President (Technical). Even if it is held that the Manager, Personnel and Administration, not being the Head of the Department where the opponent was working, was not competent authority to direct the domestic inquiry and appoint the E. O., the fact that the report and findings of the E. O. were accepted by the Vice-President (Technical), who comes within the definition of Manager as given in Section 1 (f) of the S. O. and who, on the basis of the said findings, passed the dismissal order would amount to ratification by the Manager of the irregularity, if any in the appointment order of the E. O.

I conclude, therefore, that the Inquiry was held by the competent authority and the dismissal order was also passed by the competent authority.

17. In the case of Hindustan Brown Boveri Limited quoted above the S. C. has held that where the S. O. reserve the power of dismissal to a particular authority, it is this authority who has to exercise this power.

18. Let us see now whether the domestic inquiry held by the applicant company is fair:

I have carefully perused the inquiry proceedings and it is clear from them that the E. O. made various attempts to secure the presence of the Opponent in the inquiry, but without success and, hence, the proceedings were taken ex-parte. In his statement before this Tribunal, the opponent has stated that he did not go to Keni's Hotel to collect the charge sheet, because he was already served with the copy of the charge sheet; that, on the first occasion, his inquiry was to be held at Furtado's Flat at Chicalim; at that time, he went there, knocked at the door, but nobody opened the door; so he returned home. He went to Keni's Hotel, got from the receptionist the room number, knocked at the door, but nobody was there to open the door. He waited for sometime and went home. In his cross, he has stated that he brought to the notice of the Union the fact that he found the Furtado's Flat and the room of Keni's Hotel booked for the inquiry closed and the Union wrote to the Management referring both these facts. However, he was not able to produce the copies of such letters sent to the Management by the Union, saying that they were misplaced. He also did not lead any evidence to prove that any such letters were received by the Company. He has admitted that both the above facts are very important in so far as his defence is concerned and nevertheless they did not find place in his written statement, which leads me to believe that they are an after thought. The Opponent deliberately did not go to Keni's Hotel to attend the inquiry and, hence, he cannot complain about the fairness of the ex-parte inquiry held against him.

19. The Opponents rep., in the cross-examination of the E. O., has suggested that leading questions were put to the witnesses, by this way spoiling the fairness of the inquiry, which suggestion was strongly denied by the E. O. Otherwise, putting leading questions does not vitiate the inquiry but only entitles the Labour Court not to attach any weight to such evidence obtained by way of answer to the leading questions, as it has been held by the Calcutta High Court in its ruling in the case of Howra Trading Co. Pvt. Ltd. and IV Industrial Tribunal, West Bengal and another, reported in II LLJ 1966 page 282.

In our case, however, it is not proved that leading questions were put to the witnesses so as to vitiate the result of the inquiry.

20. It is further urged by the Ld. Rep. of the Opponent that the E. O. did not make any efforts to find out whether documentary evidence regarding the incidents which were subject matter of the Inquiry was available; did not examine the police officer before whom complaints of assault were made, nor the photographer who had taken photographs which were produced in the enquiry, and so, it is alleged, a formal enquiry was held by the E. O. on which the Court cannot rely.

It is to noted, however, that Tribunals exercising quasi Judicial functions—and the Industrial Tribunal is one of them—are not courts and, therefore, they are not bound to follow the procedure prescribed for trials by Courts, nor are they bound by strict rules of evidence. They can unlike courts obtain all information material for the points under inquiry from all sources and through all channels without being fettered by rules and procedure which govern proceedings in courts, as it has been held by the S.C. in State of Mysore and Sivabasappa Shivappa, reported in I LLJ 1964 page 24.

21. The S.C. has also held in the case of Major U.R. Bhat V/s. Union of India, reported in FIR 1961—62 Vol. 21 page 478 that an Officer, holding a departmental inquiry, is not bound by the strict rules of the Law of Evidence and when the employee declines to take part in the proceedings and fails to remain present it will be open to the E.O. to proceed on the materials which were placed before him.

22. Another submission made on behalf of the Opponent is that the domestic inquiry was held without calling for an explanation from the opponent on the charges levelled against him and the punishment was also imposed without giving the workman final show cause notice as to why the intended punishment should not be imposed.

In this respect, I should say that there is no statutory obligation cast on the Management to call for an explanation

before directing the domestic inquiry (vide S. C. Ruling in Fire-Stone Tyre and Rubber Co. Ltd. and their workmen, reported in 1967 II LLJ 715 and Madras High Court, Ruling in Anglo American Direct Tea Trading Co. Ltd., and Labour Court, Coimbatore, and another reported in I LLJ 1971 page 147).

23. It is contended by the Ld. Rep. of the Opponent that when the S. O. prescribe a certain procedure for the inquiry, such procedure has to be followed. For this purpose, he relies on the S. C. Ruling in the case of Imperial Tabaco reported in II LLJ page 1961. In the instant case, it is alleged, Section 24(iv) of the S. O. of the Company, while prescribing the procedure for the inquiry, makes it compulsory for calling for an explanation of the facts mentioned in the charge sheet before the inquiry is ordered, which provision has not been followed by the employer. I cannot agree with the above submission that Section 24(iv) of the S. O. makes it compulsory for calling for an explanation of the workman before the inquiry is ordered. What Section 24(iv) provides is that the charge-sheet issued to the workman should set forth all the circumstances appearing against him and *requiring explanation*. Nowhere it is said that explanation should be called for before the inquiry is ordered. The workman can give such explanation in the course of the inquiry, if he so desires.

24. Regarding final show cause notice, the S. C. Ruling in the case of Laxmi Ratan Cotton Mills in II LIC page 1204, relied upon by the Ld. Rep. of the opponent, is not attracted in our case, because there the S. O. expressly provided for such notice, which does not happen in our case.

25. It is also contended by the Ld. Rep. of the Opponent that Section 24(vii) of the S. O. makes it compulsory for the punishing authority, at the time of imposing the punishment, to apply its mind to the gravity of misconduct, the previous record of the workman, if any, and any other extenuating or aggravating circumstances that may exist. The punishing authority, it is alleged, has not effectively applied its mind to the previous record of the workman, but only formally complied with the said provision by referring to it.

But it is not so. The dismissal order in the instant case makes express mention that the past record of the workman was considered and no extenuating circumstances were found but only aggravating circumstances to warrant a severe punishment and, in view of the gravity of the acts of misconduct established in the inquiry, has decided to dismiss him. This would be sufficient compliance with the requirements of the said provision of the S. O., as it was held by the Bombay High Court in its Ruling in the case of Raymond Woolen Mills Ltd., and A. K. Torat reported in FLR Vol. 40 page 13.

26. Also the Madras High Court in its Ruling in the case of Solar Works Madras and their workmen and another, reported in I LLJ 1963 page 765 has held that when a misconduct per se is sufficient to justify the dismissal because of its serious nature, there is no scope at all for entertaining any apprehension that the Management failed to give due weight to the provisions of the S. O. regarding previous record and that, if it had done so, a different result would have followed.

27. Finally, regarding the fairness of the inquiry ex-parte held, it would be relevant to quote the observations made by the S. C. Ruling in Laxmi Devi Sugar Mills Ltd., V/s. Ram Swarup and others, reported in 1956 I LLJ page 17. In this Ruling, the S. C. has held: if due notice of the inquiry was given and the workmen did not avail of the opportunity to present themselves and defend their action, they had only to blame themselves for it. If full and free opportunity was given to the workmen to present themselves and defend themselves, it could not be stated that the Inquiry was nothing but fair. No principles of natural justice were violated and the Management was at liberty to come to its own conclusion in regard to the culpability of the workmen and also regarding the punishment to be imposed on them. It was not open to the workmen, having regard to the attitude adopted by them throughout, in relation to the inquiry, to urge that the inquiry was not fair or impartial or that the principles of natural justice had been violated by the General Manager in the conduct of the inquiry. The scope of the inquiry under Section 33 is only to see whether the ban imposed by Section 33 should be lifted. A prima-facie case has to be made out by the employer for lifting of such ban and the only jurisdiction the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala-fide or is not resorting to an unfair practice or victimization. The Tribunal would not be con-

cerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the Management was bonafide or actuated by the motive of victimization.

28. In view of all that is stated above, I hold that the domestic inquiry ex-parte held by the Company against the Opponent is fair and proper."

Now, the subsequent numbering of paras in this Award shall be in continuation of the Order dated 15-10-1982 reproduced above.

29. Issue No. 2 regarding the non compliance of Section 33(2)(b) of the Act was not pressed by the parties and, hence, it is to be considered as dropped.

30. As issues No. 3 and 4 concerning victimization and discrimination were to be proved by the workman, the Ld. Rep. for the workman moved an application dated 24-7-1981 praying that the employer be directed to produce the documents listed in the schedule concerning several other workers charge-sheeted on the occasion with same or similar charges, found guilty and punished with lesser punishment. This application was objected to by the employer's rep. and, finally, disposed off by my order dated 22-1-1982, directing the employer to produce the required documents within 15 days. In compliance with this direction the employer produced one statement showing the past record of other workmen prior to the incident of 1980-81 and later also one file containing the copies of the charge-sheets, findings, punishing orders, etc., of the other workmen against whom inquiry was held on the same occasion, which documents, by consent, were taken on record in file No. 5/81 and marked as Exh. Q-1 colly. Also a chart showing the past record of the said workers alongwith the charges framed against them and the punishment imposed regarding the same incidents which are subject matter of these proceedings was produced by the workman's rep. in case No. 7/81, which was marked as Exh W-4. In the same case 7/81, the past record of the Opponent and others, against whom inquiry was held for the incidents, subject matter of these proceedings, was produced by the employer and marked as Exh. E-6.

31. Since the inquiry in this case was held fair and proper by my order dated 15-10-1982, the only points which arise for my consideration now are:

- i) Whether the employer has made out a prima-facie case in the inquiry regarding the misconducts alleged in the charge-sheet; and
- ii) Whether the punishment imposed on the workman is justified or whether, while imposing such punishment, there has been discrimination, which discrimination would amount to victimization.

32. Considering first the point of prima facie case:

In the charge sheet issued to the Opponent workman (Exh M-1 in the inquiry proceedings Exh 9A-1) the following charges were levelled against the Opponent:

- a) Riotous and disorderly behaviour inside and outside the premises of the establishment. (XI)
- b) Assault and threat of assault within and outside the premises of the Company. (XI)
- c) Going on illegal strike, inciting and instigating and acting in furtherance thereof. (II)
- d) Acts subversive of discipline or good behaviour on the premises of the Company (XII).

33. In support of the said charges the Management has led evidence on the following incidents:

- i) Toppling of the Jeep GDE 430 on 6-9-1980;
- ii) Toppling of the Jeep GDL 3012 on 7-9-1980;
- iii) Stone pelting on the Administrative Bldg., and other incidents occurred on 7-9-1980;
- iv) Assault on Batikar, Ashok Kumar, B. Quadros, B. Gomes and others on 8-9-1980;
- v) Strike.

34. On the incident of toppling of the jeep GDE 430, the following witnesses have given evidence: MW-1 P. S. Parekh, MW-2 V K. Shewale and MW-3 B. S. Siddu, the first, Security Administrator and the other two, Security Inspectors for SOMC. MW-1 has stated that the workman was in the crowd

that toppled the jeep and could prominently be seen encouraging his colleagues to lift it. MW-2 has stated that the workman, Carvalho, was seen instigating other workers to topple the jeep. MW-3 saw Carvalho among the others who toppled the jeep.

Photo M-16 shows the jeep in toppled condition.

The evidence of the above 3 witnesses, considered alongwith the photo M-16, proves prima facie that the workman Carvalho has actively participated in this incident.

35. On the incident of toppling of the jeep No. GDL 3012: MW-1 Parekh saw Carvalho in the crowd shouting: "Don't allow the jeep to go". Later, Carvalho was seen by the witness alongwith others lifting the jeep. MW-2 Shewale, MW-3 Siddu and MW-4 V. J. Naik saw Carvalho in the group that toppled the jeep 3012. MW-10 K. D. Thampun saw Carvalho and others toppling the jeep. Photo M-18 shows the jeep in a toppled condition.

Evidence of the above 5 witnesses, read with the photograph M-18 and the FIR M-15 based on Pillai's report, proves prima-facie the incident and the involvement of Carvalho in it.

36. Stone pelting at the Administrative Building etc.: MW-2 Shewale saw Carvalho and others throwing stones and breaking window panes and glasses and also uprooting the plants and fence of the garden in front of the building. MW-10 K.D. Thampun saw Carvalho moving in the crowd that was throwing stones and damaging the garden and asking persons to throw stones; he was shouting "Come on, go ahead, go ahead". The photos M-19 and 20 and the FIR based on Pillai's report prove the occurrence of the incident and the evidence of the above witnesses proves prima facie that Carvalho has taken active part in it.

37. Assault on Bhatkar, Ashok Kumar, B. Quadros, B. Gomes and others on 8-9-1980:

a) Regarding assault on Bhatkar: MW-6, Cedric D'Souza saw Carvalho hitting Bhatkar on his back. MW-7 S. R. Priolkar has stated that, on the very day, Bhatkar had told him that Carvalho had beaten him when he was running towards the highway. MW-9, who is Bhatkar himself, has confirmed the assault on him by Carvalho on his back with a stick. Bhatkar has stated that he did not go to any doctor as he had only a swelling at the back but he complained to his superiors and the copy of the complaint dated 16-9-1980 (Exh M-23) has been taken on record. It is contended by the Ld. Counsel of the workmen that the fact that the complaint Exh M-23 is dated 16-9-1980 and the charge sheet is dated 15-9-1980 would suggest that this complaint was filed by the complainant at the instigation of the Management to strengthen its case. It may be that he is right, but even without such complaint, the evidence on record would prima-facie prove that Bhatkar was assaulted with a stick by Carvalho.

b) Regarding assault on Ashok Kumar and B. Gomes:

In so far assault on Ashok Kumar is concerned, Carvalho was given the benefit of doubt by the Inquiry Officer and regarding B. Gomes, the Inquiry Officer's finding is that Carvalho did not assault him at all. Hence, these two assaults cannot be considered as proved against Carvalho.

c) Regarding assault on B. Quadros:

MW-6 J. C. R. D'Souza who has stated that when he, Quadros and others went on Sancoale road, the minibus in which Carvalho and others were travelling overtook them and stopped in front, Carvalho, Nagvenkar and others got down and inquired whether R. C. Walla, i.e. Quadros, was there. Then they went and hammered Quadros with sticks. However, Quadros himself has stated that Rosario and Nagvenkar are the persons who assaulted him and, regarding others, it is difficult for him to locate the persons from the crowd. Although the Inquiry Officer has held Carvalho guilty of this assault, I am inclined to give him the benefit of doubt, in view of the statement made by Quadros himself.

d) Regarding assault on Varik:

The employer did not give finding in this connection. I have perused the evidence on record and the only evidence I found in respect of this assault is of Varik himself, who has stated that Carvalho was inciting the workers to beat him and, in fact, he was beaten, but he cannot say whether Carvalho has assaulted him. In view of such statement, I have to give Carvalho the benefit of doubt in respect of this assault.

38. Strike: The attendance card M-24 showing that Carvalho did not attend work from 7-9-1980, read with the Union's letter M-25, namely para 23 at page 1, and the last para at page 2 would prima-facie show that it was a deliberate absence due to strike of which the employer was warned by the said letter of the Union. And this strike was illegal under Section 23(b) and 24(1) of the Act, as it started in the pendency of the reference to the Industrial Tribunal of a dispute in respect of the promotion of Mr. D'Melo by order dated 25-7-1980, published in the Government Gazette No. 17, II Series of the same date (Exh M-26).

39. The Ld. Counsel for the workman, in his oral arguments, has made some general observations in respect of the above charges:

i) That none of the charges is preceded by a complaint in writing, which is the procedure usually followed, as per the statement of the employer's witness No. 8 Ulhas Keni; this fact would show that whatever complaints or reports existed must have been suppressed by the Management in order to manipulate the case as per its convenience. It is further observed that, in the case of assault on Bhatikar, the charge sheet is dated 15-9-1980 and the complaint is dated 16-9-1980!

ii) Some incidents narrated by the witnesses are not mentioned in the security diary and others, although mentioned, the names of the persons involved are not disclosed. According to him, names have not been purposely disclosed in order to enable the Management to implicate those workers who were instigating others and creating trouble in the factory.

iii) Regarding stoning and damaging the Administrative Building: This is an important incident and ought to have been recorded in the Security Diary, had it taken place and even a police complaint ought to have been lodged, which has not been done.

iv) The charge of illegal strike is common to all workers. Nevertheless, only a few have been chosen for disciplinary action.

v) In spite of the stand taken by the Union that the past record of the workers was not considered while imposing the punishment, the employer did not try to lead any evidence in this respect. It was for the Management to prove that there was substantial compliance with the provisions of the Standing Orders regarding the past record, which the Management has failed to do. And when a provision of the S. O. is violated, approval under Section 33 has to be rejected. (Vide 1974 2LLJ, page 84 of the Bombay High Court in Borosil Glass Work Limited and M.G. Chitale V/s. Richard M. de Souza.

vi) Exh E-5, E-6 and W-4 prove that, for similar offences, the employer has imposed different punishments, thereby committing discrimination in order to victimize some of the workmen. It was for the employer to prove on what grounds discrimination was made, but the employer has not led any evidence in this connection.

40. I shall deal now with the above observations of the Ld. Counsel of the workmen:

i) Absence of written complaints to base the charges: Even assuming as true the statement made by witness No. 8, Ulhas Keni, that the usual procedure followed was of complaints in writing, it is to be noted that, as shown from the records, an atmosphere of terror and tension, caused by the workmen during the strike period, was prevailing on those days inside and outside the premises of the factory and, under such circumstances, one could hardly expect that there would be written complaints regarding all the incidents which were taking place in those days. Quick action was required and so the incidents were often orally reported and even over the phone and instructions also were given orally or over the phone. It cannot be argued, therefore, that only because some of the incidents have not been recorded in the security diary they did not take place at all. The occurrence of the incidents has been duly proved by the evidence led by the Management, which has been referred to above.

ii) Non disclosure of names in the security diary of the persons involved:

It has been stated by the Security Officer that it was a practice not to disclose such names, which fact has been confirmed by Shri Cordeiro, Personnel Officer. Therefore, no inference against the Management can be drawn

only because the names of the persons involved are not mentioned in the Security Diary.

iii) Stoning and damaging of the Administrative Building:

This incident, no doubt, is a very important one and, contrary to what is contended by the Ld. Counsel of the workman, it has been recorded in the security diary. Mr. P. S. Parekh, in his statement before the Inquiry Officer, has stated that he asked Thampun to make a report in the security diary of all the events of that day, as he was very busy. Thampun has stated that, as per the instructions of Parekh, he made the report of the incident in the security diary which are at Section No. 29, 30 and 32 at pages 34 and 35 and were shown to the Inquiry Officer.

iv), v) and vi) These points shall be considered while dealing with the point of victimization raised by the workman.

41. From all that is stated above, I can say that the employer has made out a prima facie case, for punishing the workman for the misconducts committed by him.

42. The next question to be considered is as to whether the punishment imposed on the workman is justified or, although justified in principle, whether the employer has discriminated between this workman and other workmen, imposing more severe punishment on him, which severe punishment would suggest victimization.

43. It is contended by the Ld. Counsel of the workman that S. O. No. 22(VII) provides that, while awarding punishment, the Management shall take into account the gravity of the misconduct, the previous record, if any, of the workman or any other extenuating or aggravating circumstances that may exist. According to him, as per the 1974 Bombay High Court ruling referred to above, there should be effective application of mind by the punishing authority to the past record of the workman and not a formal or routine compliance of the said provision. The violation of this provision would lead to rejection of an application for approval. This point was also raised by the Ld. Counsel while advancing his arguments on the preliminary issue on the fairness of the inquiry, although the Bombay High Court ruling, now cited, was not cited at that time and it was also not within my knowledge at that time and, therefore, not considered by me while deciding the said contention, which was disposed of by me in para 25 of the said order dated 15-10-1982. This point, therefore, cannot now be re-opened.

44. The Inquiry Officer has, in his findings, held Shri Carvalho guilty of the following misconducts:

1) Riotous and disorderly behaviour inside and outside the premises of the establishment in view of his involvement in the incidents:

i) Toppling of jeep GDE 430; ii) Toppling of the jeep No. GDL 3012; iii) Stone pelting at the Administrative Building; and iv) Assault on Bhatikar and Quadros.

2) Going on illegal strike from 7-9-1980 onwards, which is a misconduct under S. O. No. 22(II); and

3) Acts subversive of discipline and good behaviour No. 22(XII) of the S. O. as far as his involvement in the above incidents, which took place within the premises of the Company, as per the definition of clause 2(c) of the S. O.

From para 34 to 38 above, it is seen that I have accepted the above findings as prima-facie justified except regarding the one of assault on B. Quadros for which I have given the workman the benefit of doubt. The said misconducts are acts subversive of discipline and good behaviour, which is also a misconduct as per No. 22(XI) of the S. O. of the Company Exh M-13.

45. Standing Order 24(I) prescribes the following punishments for misconducts:

a) Warning or censure;

b) fine;

c) suspension without wages and allowances;

d) with-holding of increment or increments or promotion or reduction to a lower post or time scale for a maximum period of one year;

e) discharge from service without notice or payments in lieu of notice; and

f) dismissal without notice or payment in lieu of notice.

46. I shall consider now the point of unfair discrimination amounting to victimization raised by the workman:

This point was raised by the workman in his reply to the application for approval filed by the applicant, wherein he had stated that this was a case of victimization against him, he being an active member of the Union and that many other workmen found guilty of same or similar charges were subjected to much lesser punishments. In spite of the objections raised by the employer to the framing of the issue regarding victimization in an application under Section 33(2) of the Act, issue No. 3 was framed by the Tribunal and the objection raised was dismissed by my order dated 22-1-1982.

47. By his application dated 24-7-1981 the Ld. Counsel for the workman requested the Tribunal to direct the employer company to produce the documents listed in the application regarding other workmen charged with similar charges, found guilty of the same and punished with lesser punishment. In spite of the objections raised by the employer, this application was granted by my order dated 22-1-1982 and the employer was directed to produce the documents asked for, which direction it has complied with.

48. For the misconducts proved against the workman, which are of a serious nature, he, undoubtedly, could have been punished with dismissal by the Management. It is to be noted, however, that Exh W-4, in file No. 7/81, read with the copies of the charge-sheets and the findings of the Inquiry Officer regarding other workers produced by the employer Exh O-1 colly. shows that, for similar misconducts committed by them, lesser punishment was imposed. For instance, from Exh W-4, read with the copies of charge sheets and findings of the I. O. in respect of other workers, it is seen that:

a) Workman Jagir Singh was held guilty of:

- i) toppling of Jeep GDE 430;
- ii) stoning of administrative building and damaging the park;
- iii) assault on Khanna;
- iv) stoning Bhaticar;
- v) illegal strike; and
- vi) acts subversive of discipline.

His past record was not clean. Inquiry instituted against him for assaulting co-worker Banu was dropped, in view of the apology tendered by him. In spite of this, he was punished by withholding 4 increments during one year.

b) Workmen G. D. Abraham and M. R. Diman were held guilty of:

- i) toppling vehicles;
- ii) stoning administrative building;
- iii) assault on John Kora and Khanna respectively;
- iv) illegal strike; and
- v) acts subversive of discipline.

Past record clean. Have been punished with withdrawal of 3 and 2 increments for one year, respectively.

c) Workmen M. M. Cardozo and Harban Singh, held guilty of:

- i) toppling vehicles;
- ii) stoning administrative building;
- iii) assault on Khanna; and
- iv) acts subversive of discipline.

Past record of Cardozo shows 5 charges, but enquiry dropped as per settlement dated 28-8-1980. Past record of Harban Singh: Nil. Each of them punished by withholding 2 increments for one year.

d) Workman H. B. Bandekar, held guilty of:

- i) stoning of administrative Building;
- ii) assault on Sohal and Khanna;
- iii) illegal strike; and
- iv) acts subversive of discipline.

Past record: nil. Punishment imposed: 3 increments withheld for one year.

e) Workman Shri B. D'Costa, held guilty of:

- i) toppling of fire jeep;
- ii) stoning of administrative building;
- iii) assault on Khanna;
- iv) illegal strike; and
- v) acts subversive of discipline.

Past record: charge-sheeted for restraining and intimidating. Inquiry dropped, as per settlement dated 28-8-1980. Punishment imposed: 4 increments for one year withheld.

f) Workman Shri Dominic Fernandes, held guilty of:

- i) toppling of fire jeep;
- ii) instigating the stoning of administrative building;
- iii) assault on Varik;
- iv) illegal strike, intimidation and coercion; and
- v) acts subversive of discipline.

Past record nil. Punishment: 2 increments for one year withheld.

g) Workman Felix Fernandes, held guilty of:

- i) toppling of jeeps;
- ii) stoning of administrative building;
- iii) obstruction of car;
- iv) threat of assault on Security Administrative Officer;
- v) illegal strike; and
- vi) acts subversive of discipline.

Past record: nil. Punishment: suspension for 15 days.

h) Workman H. C. Sharma, held guilty of:

- i) toppling of jeep;
- ii) stoning of administrative building;
- iii) assault on Walke; and
- iv) acts subversive of discipline.

Past record: charge sheeted for gherao; inquiry dropped, as per settlement dated 2-8-1984. Punishment: 2 increments withheld.

i) Workman M. S. Saini, held guilty of:

- i) toppling of jeep;
- ii) stoning administrative building;
- iii) illegal strike; and
- iv) acts subversive of discipline.

Past record: nil. Punishment: warning.

j) Workman Gurdip Singh, held guilty of:

- i) toppling of jeep;
- ii) stoning administrative building;
- iii) illegal strike; and
- iv) acts subversive of discipline.

Past record: nil. Punishment: nil.

k) Workman P. M. Kutty, held guilty of:

- i) toppling of jeep and V.I.P. Car;
- ii) stoning of administrative building and inciting others;
- iii) illegal strike; and
- iv) acts subversive of discipline.

Past record: charged for failure to observe safety regulation and damage to the Company's property. No action taken. Punishment: 15 days suspension.

l) Workman L. J. Patel, held guilty of:

- i) stoning administrative building;
- ii) threat of assault on Kora;
- iii) illegal strike; and
- iv) Acts subversive of discipline.

Past record: nil. Punishment: warning.

m) Workman M. Narayan, held guilty of:

- i) toppling of jeep;
- ii) stoning administrative building;
- iii) assault on Sohal;
- iv) illegal strike; and
- v) acts subversive of discipline.

Past record: nil. Punishment: 15 days suspension.

49. The above chart shows that Jagir Singh was held guilty of similar misconducts as attributed to the workman Carvalho and, in spite of his past record not being clean, was punished with withdrawal of 4 increments for one year. The workman Carvalho has his past record clean and was dismissed from service.

Same is the case, with slight variations, of G. D. Abraham, M. K. Diman, M. N. Cardozo and Harban Singh, B. D'Costa, Dominic Fernandes, Felix Fernandes, M. Narayan, who were punished with withdrawal of 3 increments, 2 increments, 2 increments, 2 increments, 4 increments, 2 increments, suspension for 15 days and suspension for 15 days, respectively. Except for M. Cardozo and B. D'Costa, whose past record was not clean, the others had their past record clean.

50. Why this discrimination against Shri Carvalho?

According to the Ld. Counsel for the employer, there is no discrimination in so far Shri Carvalho is concerned because:

- i) The offences are not the same;
- ii) And the participation of the concerned employees in the offences also differs.

He has relied, inter-alia, on the following rulings:

- a) A. V. B. Workers Union and others V/s. State of West Bengal and others 1978, LIC page 1409, Calcutta High Court. In this case, the question was whether dismissal of 3 employees for misconduct was justified. The Arbitrator appointed under Section 10(a) of the Act gave his finding that the dismissal was justified in all cases, but granting relief to one employee on the ground that, on similar set of facts as obtained in his case, company had taken lenient view in another employees case. The charge of discrimination raised by the Petitioner's counsel was refuted on the ground that if for the gross misconduct committed by all the workmen order of dismissal could be passed, then it was not open to the Petitioner to contend as to why such orders were passed against them even if the Company had taken a lenient view against another employee, which contention was upheld by the High Court in this Ruling.
- b) Kaliprasad Muzumdar and others V/s. Brooke Bond India Limited 1954 I LLJ 163, a ruling of the Labour Appellate Tribunal of India Calcutta. Here the question was whether the selection of some of the delinquent workmen for punishment amounts to victimization. The ruling held that all that has to be seen is whether the Tribunal has applied its mind to the salient points in the case and, if the selection made by the Management in exercise of its discretion is *bonafide* coming to the conclusion that the conduct of some of them is much more objectionable than the conduct of the others, there is nothing wrong for the Management in either not taking action against those others by excusing them or inflicting a lesser punishment. It is only if the selection is made with motives of victimization, that would be improper.
- c) Aditya Mills Limited V/s. Ram Dayal, 1974, LIC page 25, Rajasthan High Court. In this ruling, their Lordships, after quoting the ruling of Calcutta High Court in National Tabaco Co., of India case, reported in AIR 1960 page 240, define victimization as meaning one of two things:

1st: "Where the workman concerned is innocent and yet is being punished because he has in some way displeased the employer, for example, by being an active member of a Union of workmen who were acting prejudicially to the employer's interest;

2nd: Where an employee has committed an offence, but he is given a punishment quite out of proportion to the gravity of the offence, simply because he has

incurred the displeasure of the employer in a similar manner as mentioned above. But, where it is found that the employee is guilty of gross misconduct, then there cannot be any question of victimization because it merits dismissal by itself". And then concludes: "In our opinion victimization consists in punishing an employee for any object other than the one of inflicting just and appropriate punishment for a proven lapse."

In this case, because of a strike alleged to have been incited by 4 workmen, an inquiry was conducted and the Inquiry Officer submitted his report saying that the charge of inciting the strike was proved against the 4 workmen. On the basis of this report, the 4 workmen were dismissed by the company. As some proceedings were pending in the Labour Court, approval for the dismissal under Section 33(2) (b) was sought for, but the Labour Court declined to approve the Management's action.

In a Writ petition filed to the Rajasthan High Court, the single Judge who heard the case observed that, although the Labour Court did not bear in mind the precise scope of its jurisdiction, the ultimate decision in rejecting the Management's application was correct and called for no interference and dismissed the petition in limine. Aggrieved by that order, the Management filed an appeal. The question which fell for the determination of the Court was whether the Inquiry Officer's report, as a result of which the 4 workmen were dismissed, was vitiated by the vice of victimization. The Labour Court had refused to look into the evidence of one J. N. Patel, presumably because it was recorded, in spite of the protests of the workman, after the closure of the case by the parties. "But even if we were to consider this evidence (says the ruling) what J. N. Patel stated was that 4 to 6 persons incited the others to go on strike. 4 workmen, who are respondents before us, have been dismissed, but what happened to the other two who were also guilty of similar behaviour? Was their incitement less stimulating than that of the respondents, or is it a case of discrimination against those 4 atleast qua the other 2? The answer is plain. Patel is unable to give us any reason why these 4 persons were chosen and the Inquiry Officer is equally silent. *Discrimination, therefore is inferable from this circumstance* apart from the fact that this additional evidence has a semblance of an after thought. The workmen have been saying that because they joined another Union, which was not to the liking of the Management, they were singled out. There may be some truth in this assertion, but we spell discrimination from N. J. Patel's evidence itself, which evidence was recorded after some deliberation by the Management."

I have quoted the above ruling in some detail because, although the employer has relied on the proposition mentioned therein in the first part that "where it is found that the employer is guilty of gross misconduct, then there cannot be any question of victimization because it merits dismissal by itself". The remaining portion shows that discrimination amounting to victimization is possible when more than one workman is punished for gross misconduct and different punishments are imposed on them without any justification. The same ruling also shows that discrimination can be *inferred from the circumstances of the case*.

51. The Ld. Counsel for the employer, relying upon the S. C. Judgement in M/s. Bharat Iron Works V/s. Bhagubhai Balubhai Patel and others, reported in LIC 1976 page 4, contends that when there is no defect in procedure in a domestic inquiry against an employee, the Tribunal, while granting or withholding permission under Section 33, does not sit as a Court of appeal weighing or re-appreciating the evidence for itself, but only examines the finding of the I. O. on the evidence of the domestic inquiry as it is, in order to find out whether there is a *prima facie* case or not. His further contention, based on the said ruling, is that a proved misconduct is antithesis of victimization as understood in industrial relations and that victimization being a serious charge by an employee against an employer must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them; that the onus of establishing a plea of victimization will be upon the person pleading it; mere allegations, vague suggestions and insinuations are not enough. In the instant case, it is contended, the Tribunal has already held that the domestic inquiry conducted by the employer is fair and proper and with due compliance of the principles of natural justice. So, it would be for the workman to prove his plea of victimization, if any. But, for this purpose, the workman had to plead it adequately, giving all particulars to enable the employer to fully meet them, which he has not done.

In his reply to the application, the workman has only alleged that he was an office bearer of the Union and has been victimized for his bonafide trade union activities; that many other workers, who were found guilty of the same or similar charges, have been subjected to much lesser punishments, while he has been dismissed. This discrimination has been practised, because he is an office bearer/leader of the union, which also amounts to victimization.

52. The above cited ruling in its para 8, reads as follows:

"It is apparent that victimization may partake of various types, to cite one or two only for example, pressurizing an employee to leave the Union or Union activities; treating an employee unequally, or in an obviously discriminating manner for the sole reason of his connection with the union or his particular union activity, inflicting a grossly monstrous punishment, which no rational person would impose upon an employee and the like".

53. And this is precisely the type of victimization alleged by the workman against him, i.e. discrimination while imposing the punishment of dismissal on him, as compared to the lesser punishments imposed on the other workmen found guilty of similar charges, which discrimination, according to the workman, has been committed by the Management only because of his leadership in the Union activities. Indeed, in his statement before the Court, the workman has stated that he was an active executive member of the Union and was representing the workers in the Labour Commissioner's office and that is why they have victimized him. This would be, according to me, sufficient compliance with the requirements of law that victimization should be adequately pleaded by the workman. In his cross, he has stated that he has no idea as to whether all the executive members of the Union were charge-sheeted, but some of them were. He has further stated that, in March 1980, some members were co-opted and there was reshuffling of the office bearers as per the constitution and, in fact, the letter dated 12-7-1979 (Exh 9A-2) addressed by the Union to the employers proves that Shri Carvalho was one of the executive members for the year 1979-80. There was no suggestion that he was not an active member and was not representing the workers before the Labour Commissioner's office, as stated by him. So, the 1st contention of the workman that he was an active executive member of the Union is to be considered as proved.

54. Let us see now whether the alleged discrimination is also proved against the applicant. I have already shown in para 49 above that, for similar misconducts, lesser punishments were imposed by the Management on some of the employees. In spite of the fact that the worker had raised, in his reply, the plea of victimization for his trade union activities, the employer did not examine in open court the punishing authority to elicit an explanation from him for such discrimination. However, the Ld. Counsel for the employer, in his oral arguments, tried to justify it, saying that the concerned workman was *not only participating in the violent incidents, but also inciting and instigating others to do the said acts.*

55. So far this workman is concerned:

Instigation and incitement, as per the charge sheet Exh M-1, refers only to the incidents of toppling of the Jeep No. 430 on 6-9-1980 and stoning and damaging the administrative building and the park in front on 7-9-1980 and so we are not concerned with incitement or instigation, if any, regarding other incidents. To prove such incitement or instigation, the Ld. Counsel for the employer has taken me through the statements of P. S. Parekh, Shewale and Thampun recorded in the domestic inquiry against Shri Carvalho. Shri Parekh has stated that Carvalho was in the crowd that toppled the jeep and could *prominently be seen encouraging his colleagues to lift it.* Shri V. K. Shewale has stated that Shri Carvalho was *seen instigating other workmen to topple the jeep.* He was also seen throwing stones at the administrative building and *inciting others to do so.* K. D. Thampun has stated that he saw Carvalho moving in the crowd, throwing stones at the Administrative building, pulling out plants and *asking the persons to throw stones. He was shouting, "Come on, go ahead".*

56. In almost all the inquiries held against the workmen which led to their dismissal and whose files are now before the Tribunal, the charge of "incitement or instigation" has been levelled against the concerned workman and some of the witnesses examined have deposed in respect of such incitement or instigation. It is to be noted, however, that the same witnesses, when examined in the case of other workmen equally charged with incitement or instigation, in their depo-

sitions referred to incitement and instigation regarding the particular workman against whom the enquiry was being conducted and did not even mention the names of others who, according to their statements in the particular file, were also found inciting and instigating. This fact leads me to believe that the witnesses were reminded of such incitement or instigation only when they saw the concerned workman in the particular inquiry. Had some of the workmen had a prominent role in any of the incidents, especially regarding incitement or instigation, it is but natural that the names of all such workmen should have been mentioned by the witnesses in all the inquiries, which has not been done.

For example, witness Parekh who, in the inquiry against Carvalho, refers to the latter as *prominently seen encouraging his colleagues to lift the jeep 430*, did not even care to mention the said name in the file of Nagvenkar. Similarly, witness Shewale, who has referred to Carvalho as inciting other workmen to *topple the jeep 430 and to throw stones at the administrative building* is silent about the active role of Carvalho in those incidents in the file of Nagvenkar: the name of Nagvenkar is mentioned as inciting others to throw stones at the Administrative Building. This, considered with the fact that witnesses Siddu and U. J. Naik, who have also deposed on the incidents of toppling of jeep and damaging the administrative building in the file of Carvalho and mentioned the name of the latter without saying anything regarding incitement or instigation on his part could raise doubts as to whether Carvalho was, in fact, instigating or inciting other workmen to do the alleged misconducts or not. At any rate, since in an application under Section 33(2) we are concerned only with a prima-facie case and this Court is not sitting as a Court of appeal reappraising the evidence recorded in the domestic inquiry, we can consider as prima-facie proved that there was such incitement or instigation on the part of the workman. I shall, therefore, consider as prima-facie proved that Shri Carvalho was an active executive member of the Union in the year 1979-80 and was seen inciting and instigating other workers in the incident of toppling the jeep 430 and damaging the administrative building.

57. We have seen in para 54 above that the extreme penalty imposed on the workman Carvalho is being tried to be justified on the ground that the workman has not only participated in the violent incidents but has also incited and instigated the other workmen to do the said acts, which incitement or instigation has been accepted by me as prima-facie proved.

58. But would such incitement or instigation be sufficient to justify the extreme penalty imposed on the workman by the Management when, for similar misconducts, wherein there was also incitement or instigation, other workers were punished with withdrawal of increments or suspension?

59. The case of H.C. Sharma is almost similar to the case of Shri Carvalho with the aggravating circumstances that incitement and instigation was found proved against Sharma not only regarding toppling of Company's vehicles and stoning and damaging the Administrative Bldg., but also regarding assault or threat of assault on Walke. Besides, the past record of H. C. Sharma shows that he was charge sheeted for the gherao of a Sr. Officer on 15-5-1980 and the inquiry was dropped in view of the settlement dated 2-8-1980. In spite of this, he was punished with withdrawal of 2 increments for a period of one year!

60. Incitement and instigation is also proved against Shri Dominic Fernandes and M. M. Cardozo, Felix Fernandes, P. M. Kutty and Gurdip Singh regarding damaging of Administrative Building, G. D. Abraham regarding toppling of jeep GDE 430 and damaging administrative building; other misconducts found proved are almost the same or similar with slight variations. The past record of Dominic Fernandes and Felix Fernandes, Gurdip Singh and G. D. Abraham is clean but of M. M. Cardozo and P. M. Kutty is not clean. So far Cardozo is concerned, the charges framed against him were dropped, in view of the settlement dated 2-8-1980 and, in the case of P. M. Kutty, no action was taken.

61. From the above mentioned facts inference is clear that the workman Carvalho, although with his past record clean, has been discriminated by the Management while being punished with dismissal, since for almost same or similar misconducts and even regarding some workmen with their past record unclean, much lesser punishment varying from a simple warning, as in the case of Gurdip Singh, to withdrawal of 2 and 3 increments and suspension for 15 days was imposed.

62. The allegation of Shri Carvalho that he was victimized because of his leadership in the union activities has to be accepted as true, in the absence of any convincing explanation coming from the punishing authority.

63. Coming now to the punishment to be imposed on the workman Carvalho:

Although this is an application for approval under Section 33 of the Act, wherein a domestic inquiry was conducted by the employer which was held fair and proper and with due compliance of the principles of natural justice by my order dated 15-10-1982, which has been reproduced above and although, in such cases, the Tribunal is concerned only with the question of granting or refusing the approval the same does not happen when victimization is alleged and proved, because then the jurisdiction of the Tribunal is not confined to grant or refuse the approval but is wider: in such cases, the Tribunal will have full jurisdiction to interfere with the order passed by the employer in the domestic inquiry. The Supreme Court Ruling in the case of Bharat Iron Workers cited above, after stating that the Tribunal, when there is a domestic inquiry fair and proper and with due compliance of the principles of natural justice, does not sit as a court of appeal weighing or reappreciating the evidence for itself but only examines the findings of the Inquiry Officer on the evidence of the domestic inquiry as it is an order to find out whether there is a prima facie case or if the findings are perverse. And then proceeds: "In the same case i.e. where there is no failure of the principles of natural justice in the course of domestic inquiry, if the Tribunal finds that the dismissal of an employee is by way of victimization or unfair labour practice it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic inquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic inquiry will absolutely lose its importance or efficacy". (The underlining is mine).

64. After having arrived at the conclusion that the workman was victimized by the employer while imposing the punishment of dismissal on him when much lesser punishments were imposed on the other workmen found guilty of same or similar misconducts, now the question arises as to what punishment should be given to the workman for the misconducts found proved against him.

65. I have shown in para 57 above that, for same or similar misconducts some workmen were punished with withdrawal of 2-3 increments and some with suspension. The case of Shri Carvalho and the case of H. C. Sharma referred to above are very much alike. If the latter was punished with withdrawal of 2 increments, I fail to see as to why Shri Carvalho was punished with dismissal, which is the extreme penalty in the list of punishments mentioned in the Standing Order of the Company. The penalty to be imposed on Shri Carvalho should be the same as imposed on the said workman, Sharma.

66. In the premises above, I pass the following order:

ORDER

For all the reasons stated above, the order of dismissal passed by the employer against the workman Carvalho cannot be sustained and, hence, it is hereby set aside. For the misconducts found proved against the workman, withdrawal of 2 increments, for the period of one year would be, according to me, a reasonable and proper punishment as in the case of H. C. Sharma. Hence, the punishment imposed on Shri Carvalho by the employer is hereby changed to withdrawal of 2 increments during the period of one year for all the misconducts committed by him, which are subject matter of the inquiry. The workman to be deemed as in continuous service till his reinstatement and he shall be entitled to full back wages. Costs of Rs. 600/- to be paid by the employer to the workman.

Dr. Renato de Noronha
Presiding Officer
Industrial Tribunal

Notification

No. 24/11/80-ILD-Part

In exercise of the powers conferred by section 90 and section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) and in consultation with the Employees' State Insurance Corporation, the Lieutenant Governor of Goa, Daman and Diu hereby exempts the following factories/establishments owned by the Government from the operation of the said Act with effect from 5-10-1975.

Sr. No.	Name of the factory/establishment
1.	Government Printing Press, Panaji-Goa.
2.	Government Offset Press, Ribandar, Tiswadi-Goa.
3.	Government of Goa, Daman and Diu River Navigation Department, Marine Workshop, Betim, Bardez-Goa.
4.	Ice Factory & Cold Storage Plant, Panaji under the Directorate of Fisheries, Panaji-Goa.
5.	Ice Factory & Cold Storage Plant, Canacona, under the Directorate of Fisheries, Panaji-Goa.
6.	Ice Factory & Cold Storage Plant, Daman, under the Directorate of Fisheries, Panaji-Goa.
7.	Dairy Plant at Curti, Ponda-Goa.
8.	Mechanical Cultivation Office, Tonca, Caranzalem, Tiswadi-Goa, under the Directorate of Agriculture, Panaji-Goa.
9.	Government Garage, Panaji, under the Public Works Department, Panaji-Goa.
10.	Opa Water Works, Khandepar, Ponda, under the Public Works Department, Panaji-Goa.

The Dairy Establishment at Serial No. 7 above has been granted exemption till 16-5-84, when the Dairy was taken over by Goa District Co-op. Milk Producers' Union Limited.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 1st September, 1984.

Notification

No. 26/8/84-ILD

In exercise of the powers conferred by sub-section (1) of section 10 of the Factories Act, 1948 (63 of 1948), the Lieutenant Governor of Goa, Daman and Diu hereby appoints the Medical Inspector of Factories, Inspectorate of Factories and Boilers, Altinho, Panaji as a Certifying Surgeon for the whole of the Union territory of Goa, Daman and Diu for the purposes of the said Act.

By order and in the name of the Lieutenant Governor of Goa, Daman and Diu.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 12th September, 1984.

Finance Department (Expenditure)

Order

No. 2-49-77/Fin(Exp)

The Administrator of Goa, Daman and Diu is pleased to accept the notice given by Shri G. S. R. Swamy, Assistant Accounts Officer seeking voluntary retirement w.e.f. 31-8-84 (afternoon) in terms of Rule 48 A of the C.C.S. Pension Rules. Shri Swamy, therefore, stands retired from Government Service w.e.f. 31-8-1984 (A.N.).

By order and in the name of the Administrator of Goa, Daman and Diu.

K. M. Nambiar, Under Secretary (Finance Exp.).

Panaji, 15th September, 1984.

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